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United States District Court
Central District of California

UNITED STATES OF AMERICA
Plaintiff,
vs.
GUILLERMO DE LOS ANGELES
Defendant.

Case № 15-CR-00213-ODW

**ORDER DENYING DEFENDANT'S
MOTION PURSUANT TO MOTION FOR
SENTENCE REDUCTION PURSUANT TO
18 U.S.C. § 3582(c)(1)(A) [DE-119]¹**

I. INTRODUCTION

Defendant De Los Angeles has brought a motion for reduction in his sentence on ground that he qualifies for compassionate release. Specifically, he states he has difficulty breathing and sleeps with a CPAC machine. He has been provided with a continuous positive airway pressure machine to help him sleep. The continuous positive airway pressure helps keep the airway open. In addition he claims to have high blood pressure, high cholesterol and is obese. His high blood pressure and cholesterol is being controlled by medication. He has petitioned the warden for

¹ “DE” designates Docket Entry.

1 release because in the midst of the COVID-19 Pandemic, he feels he is at higher risk
2 of a far more serious outcome should he become infected.

3 **A. PROCEDURAL HISTORY**

4 On April 17, 2015, the January 2015 Grand Jury returned a three-count
5 Indictment in which Defendant was solely named. The indictment charged
6 Defendant with conspiracy to distribute and distribution of over 50 grams of
7 methamphetamine. In addition, the government filed a 18 U.S.C. § 851 Information
8 alleging three prior felony drug convictions. [DE-25].

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10 On August 17, 2015, defendant Guillermo De Los Angeles pled guilty to Count
11 One of the three-count Indictment. Count One charges a violation of 21 U.S.C. §
12 846: Conspiracy to Distribute Methamphetamine. Specifically, it alleges that
13 beginning on an unknown date and continuing until July 2, 2012, De Los Angeles and
14 others conspired to distribute at least 50 grams of methamphetamine, a Schedule II
15 controlled substance in violation of 21 U.S.C. §§ 841(a), (b)(1)(A). The parties
16 stipulated to a base offense level of 30 pursuant to USSG §2D1.1(c)(5) and reserved
17 the right to argue for additional specific offense characteristics, adjustments,
18 departures, and variances. The USAO agreed to move to dismiss Counts One and
19 Two of the 851 Information; and to recommend up to a three-level reduction for
20 acceptance of responsibility. The parties agreed to a waiver of appeal and collateral
21 attack. [DE-94]]. On June 3, 2019 Defendant was sentenced to the 120-month
22 mandatory minimum to be followed by 10 years supervised release. [DE-105.]

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24 **II. DISCUSSION**

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26 **A. DEFENDANT HAS NOT MADE A CASE FOR COMPASSIONATE RELEASE**

27 Because the requested relief is both drastic and permanent, it is subject to
28 strict statutory conditions. First, a district court can evaluate a defendant's request

for compassionate release only “after the defendant has fully exhausted all administrative rights” before the Bureau of Prisons (“BOP”). Specifically: after the defendant has fully exhausted all administrative rights to appeal, a failure of the BOP to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier[.] 18 U.S.C. § 3582(c)(1)(A). This requirement is mandatory. *United States v. Alam*, 960 F. 3d 831, 832 (6th Cir. 2020); *United States v. Raia*, 954 F. 3d 594, 597 (3d Cir. 2020). From the standpoint of the district court it is jurisdictional. See generally *Shaw v. Bank of America Corp.*, 946 F.3d 533, 541 (9th Cir. 2019) (“statutorily-provided exhaustion requirements deprive the court of jurisdiction”); *United States v. Weidenhamer*, No. CR 16-1072-1-PHXROS, 2019 WL 6050264, at *2 (D. Az. Nov. 8, 2019) (citing cases). Second, in evaluating compassionate-release requests, courts must follow both the statute and relevant, binding policy statements. See *id.*; 28 U.S.C. § 994(t); USSG § 1B1.13. Pursuant to those authorities, to be eligible for compassionate release, a defendant must demonstrate: (1) the existence of extraordinary and compelling reasons, within the meaning of the statute; and (2) that he is not a danger to the community. 18 U.S.C. § 3582(c)(1)(A). Specifically, the statute requires that any reduction be “consistent with applicable policy statements issued by the Sentencing Commission”—in this case, USSG § 1B1.13. *Id.*

Here, it appears that the first requirement has been met. Defendant has petitioned the BOP requesting release on the same grounds advanced here.

2 ***DEFENDANT IS NOT MEDICALLY ELIGIBLE FOR COMPASSIONATE RELEASE***

To be eligible for compassionate release, a defendant must demonstrate “extraordinary and compelling reasons warrant[ing] such a reduction,” “consistent

with applicable policy statements issued by the Sentencing Commission.” *Id.* Thus, as courts have recognized, Congress intended that the “Sentencing Commission, not the judiciary, determine what constitutes an appropriate use of the ‘compassionate release’ provision.” *United States v. Willingham*, No. CR113-010, 2019 WL 6733028, at *2 (S.D. Ga. Dec. 10, 2019) (noting split in authority). The Sentencing Commission’s policy statement — USSG § 1B.1.13 — is thus binding on this Court. See *Dillon vs. United States*, 560 U.S. 817, 827 (2010); see, e.g., *United States v. Nasirun*, No. 8:99-CR-367, 2020 WL 686030, at *2 (M.D. Fla. Feb. 11, 2020). But see *United States v. Brooker*, 2020 WL 5739712, at *6–7 (2d Cir. Sept. 25, 2020) (finding that USSG 1B1.13 Application Note 1(D) does not apply to compassionate release motions brought directly to the court by a defendant under the First Step Act). “General concerns about possible exposure to COVID-19 do not meet the criteria for extraordinary and compelling reasons for a reduction in sentence set forth in the Sentencing Commission’s policy statement[.]” *United States vs. Eberhart*, 448 F. Supp. 3d 1086, 1090 (NDCA 2020). Those criteria include, as relevant here:

- The medical condition “of the defendant”: specifically, whether the defendant has either a “terminal illness” or a “serious physical or medical condition” that “substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which [s]he . . . is not expected to recover.” USSG § 1B1.13, comment. (n.1(A)(i)-(ii));
- The “age of the defendant”: specifically, whether defendant is “at least 65 years old,” is “experiencing a serious deterioration in physical or mental health because of the aging process,” and has served at least 10 years or 75 percent of her term of imprisonment. *Id.*, comment. (n. 1(B)); or
- “As determined by the Director of the Bureau of Prisons, there exists in the

1 defendant's case an extraordinary and compelling reason other than, or in
2 combination with," her illness, age, and family circumstances. *Id.*, comment.
3 (n.1(D)).

4 The global COVID-19 pandemic is not a factor specific to defendant's case at all
5 — and, while his anxieties may or may not be frivolous, he offers no case-specific facts
6 establishing his eligibility for compassionate release under USSG § 1B1.13. Although
7 identifying some specific health concerns, the most relevant of which is his breathing,
8 for which he has a CPAP machine, he primarily emphasizes the general risk of COVID-
9 19: arguments that are general, wide-ranging, and would apply to essentially every
10 inmate presently in custody. The medical records he has supplied, while sparse, do not
11 demonstrate that he has sought medical treatment, beyond the medications he is
12 taking, to address his concerns. Indeed, the scant medical file undermines any claim
13 that he suffers from a "serious physical or medical condition" that "substantially
14 diminishes the ability of the defendant to provide self-care within the environment of a
15 correctional facility and from which [s]he . . . is not expected to recover." USSG §
16 1B1.13, comment. (n.1(A)(i)-(ii)); In point of fact, those record indicate he has no
17 medical restrictions.

18 "[T]he mere existence of COVID-19 in society and the possibility that it may
19 spread to a particular prison alone cannot independently justify compassionate
20 release." *Raia, supra*, 954 F.3d at 597; see also *Eberhart, supra*, 448 F. Supp. 3d at
21 1090 ("[A] reduction of sentence due solely to concerns about the spread of COVID-19
22 is not consistent with the applicable policy statement of the Sentencing Commission as
23 required by § 3582(c)(1)(A)."). To classify COVID-19 as an extraordinary and
24 compelling reason, by itself, would be inconsistent with the text of the statute and the
25 policy statement. Moreover, it would have detrimental real-world effects: interfering
26 with the ability of the Bureau of Prisons to manage its facilities and protect the
27 health and safety of inmates and staff. The Bureau of Prisons has already taken
28 steps to mitigate the risk of COVID-19 transmission in its facilities, including through
the implementation of a vaccination program and the use of personal protective equipment.

1 with BOP's organized anti-COVID-19 efforts, resulting in the inequitable treatment of
2 inmates, and undercutting the strict criteria BOP employs to determine inmates'
3 eligibility for sentence reductions and home confinement. Section 3582(c)(1)(A)
4 contemplates sentence reductions for specific individuals, not the widespread
5 prophylactic release of inmates and the modification of lawfully imposed sentences to
6 deal with a viral pandemic.

7 Indeed, the primary thrust of Defendant's argument centers on his breathing
8 difficulties, which are addressed with his CPAP. Apparently his breathing difficulties
9 manifest only during his sleep. His other ailments appear to be suitably addressed
10 with medication. Therefore, to the extent he has conditions which the CDC has
11 indicated may result in a more serious outcome in the event one with those
12 conditions contracts the virus, he would appear not to now have those conditions to
13 such a degree that they interfere with his daily life. Yet, he feels these conditions
14 create an extraordinary and compelling reason which warrants his early release from
15 prison. The Court disagrees. His medical conditions, neither separately nor in
16 combination are sufficient to permit his early release under section 3582(c)(1)(A).
17 Therefore, his request is **DENIED**.

18 **IT IS SO ORDERED.**

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20 DATED: February 1, 2021

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OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE